

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RODNEY LABORDE,

Plaintiff,

v.

MOUNT AIRY CASINO,

Defendant.

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3:16-CV-769
(JUDGE MARIANI)

ORDER

AND NOW, THIS 11th DAY OF JANUARY, 2017, upon *de novo* review of

Magistrate Judge Carlson's Report & Recommendation, (Doc. 17), **IT IS HEREBY**

ORDERED THAT:

1. The Report & Recommendation ("R&R"), (Doc. 17), is **ADOPTED** for the reasons discussed therein.
2. Defendant's Objections, (Doc. 19), are **OVERRULED**. Defendant raises two objections: (1) the R&R erred in finding that Plaintiff plausibly alleged that he was terminated because of his disability and/or because of his use of FMLA leave; and (2) the R&R erred because it failed to address Defendant's argument that Plaintiff's wrongful conduct negates any inference of discrimination. As to the first objection, Plaintiff has plead that around the general time his employer became aware of his disability and around the general time he took FMLA leave, Plaintiff was terminated. Examining the pleadings in a light most favorable to the Plaintiff, this is sufficient to create a reasonable inference that Plaintiff was terminated because of

his disability and/or his use of FMLA leave. Defendant cites to authority that mere awareness of a disability by an employer and mere temporal proximity of a termination to FMLA leave are both insufficient to raise an inference of discrimination. The cases Defendant cites, however, all concerned motions for summary judgment, not motions to dismiss for failure to state a claim. At the pleading stage, Plaintiff allegations are sufficient to state a claim and proceed to discovery. As to the second objection, even if the R&R did not address one of Defendant's arguments—Plaintiff admission of his own wrongful conduct in the complaint negates any inference of discrimination—the error, if any, is harmless because the argument is without merit. As discussed above, Plaintiff has raised a reasonable inference in his complaint that he was terminated because of his disability and/or his use of FMLA leave. Defendant cites no authority for the proposition that, *on a motion to dismiss*, a Plaintiff's admission of his or her own wrongful conduct negates an otherwise reasonable inference of discrimination, or necessarily precludes Plaintiff from pleading a *prima facie* case of discrimination. Plaintiff is not required to satisfy the same standard here as he will be required to satisfy at the summary judgment stage.

3. Defendant's Motion to Dismiss, (Doc. 8), Plaintiff's Amended Complaint is **DENIED.**

A handwritten signature in black ink, appearing to read "R. Mariani", is written over a horizontal line.

Robert D. Mariani
United States District Judge